

The facts are simple. Claimant and a co-employee were in a conversation regarding the processing of a student loan. Claimant provided an answer to the co-employee which the co-employee did not accept. The co-employee then investigated the question, finding

a contrary answer in a training manual. The co-employee then, for whatever reason, hit the claimant on the top of her head with the manual. There is a significant dispute between the parties regarding the force of this hit and regarding what, if any, damage may have resulted. Claimant continued working for one week but then, as a result of headaches incurred from this blow, missed worked for a week and sought authorized medical treatment at the preliminary hearing.

Respondent does not deny the incident occurred but argues against the extent of damage and against the intent of the co-employee.

The Assistant Director was correct that a battery suffered at the hands of a fellow employee regarding a work-related disagreement is compensable. Brannum v. Spring Lakes Country Club, Inc., 203 Kan. 658, 455 P.2d 546 (1969). Respondent, however, argues that this was not a battery or an assault of any kind as there was no criminal intent. This was merely a negligent act on the part of a co-employee. Respondent further argues that an assault or battery does not make the respondent liable unless the employer was aware the contact had occurred or that is it was foreseeable, and either acquiesced or did nothing to prevent the conduct.

In this instance, whether this was a criminal action which would constitute a battery or merely a negligent act on the part of the co-employee which led to an injury, however minor, to the claimant is irrelevant. The actions on the part of the co-employee stem from a discussion regarding a work-related issue, and occurred during a time when claimant was at work for her employer. Therefore, the accident, whether criminal battery or negligence, arose both out of and in the course of claimant's employment with respondent.

As a result of this action by the co-employee, claimant suffered a sudden and unexpected event of an unfortunate nature accompanied by a manifestation of force. This constitutes the definition of accident under K.S.A. 1997 Supp. 44-508(d). As a result of this unexpected event, claimant suffered a lesion or change in the physical structure of her body causing damage or harm thereto so that claimant's body gave way under the stress of the worker's usual labor. The fact that there may or may not have been external or visible signs of this lesion or change is irrelevant under K.S.A. 1997 Supp. 44-508(e).

Therefore, the Appeals Board finds claimant has proven accidental injury arising out of and in the course of her employment with respondent, and the Assistant Director's decision to grant medical treatment resulting therefrom should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Assistant Director Brad E. Avery dated July 29, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1998.

BOARD MEMBER

c: James L. Wisler, Topeka, KS
Mark E. Kolich, Kansas City, KS
Brad E. Avery, Assistant Director
Philip S. Harness, Director